

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
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)	
Amendment of Section 73.622(b),)	MM Docket No. 99-318
Table of Allotments,)	RM-9745
Digital Television Broadcast Stations)	
(Panama City, Florida))	

To: Chief, Video Services Division

REPLY TO SUPPLEMENTAL COMMENTS

Waitt License Company of Florida, Inc. ("Waitt"), licensee of Station WPGX(TV), Panama City, Florida, by its attorney, hereby replies to the "Supplemental Comments" ("Comments") filed February 4, 2000 by Emmis Television License Corporation of Mobile ("Emmis"), licensee of Station WALA(TV), Mobile, Alabama. Emmis's Comments, which it admits are unauthorized, purport to respond to Waitt's Consolidated Reply Comments of January 7 ("Reply").¹

Emmis claims that its Comments address an issue raised for the first time in Waitt's Reply, but that is a canard. In fact, the Comments introduce a *new* issue not raised at all by Waitt and not before the Commission in this rule making: that if Waitt operated WPGX with

¹ Emmis also proffered a Motion to Accept Supplemental Comments, but forgets to explain why it took Emmis 28 days to come up with its specious 4-page Comments.

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maximum facilities of 1000 kW on DTV Channel 29, more people could be served than would be reached with the allotted 50 kW!


Doubtless the Commission is fully aware of this truism; certainly Waitt is. But it's beside the point (and scarcely justifies acceptance of an unauthorized and grossly untimely pleading, *or* the attendant waste of the Video Services Division staff's time), since Waitt does not propose to operate on Channel 29 with maximum facilities and is not asking the Commission for permission to do so.

Annexed here is the supporting Engineering Statement of Bernard R. Segal. The Engineering Statement points out that Emmis's Comments should be disregarded for three reasons. First, Emmis has not demonstrated the feasibility of WPGX's operation on DTV Channel 29 with 1000 kW. Second, the cost of operating WPGX-DT with 1000 kW ERP would be prohibitive. Third (as pointed out above), this rule making addresses Waitt's proposal to operate WPGX-DT on Channel 9, not 29.

Emmis's assertion that its Comments assist the Commission is absurd. They should be dismissed and this proceeding promptly resolved.

Respectfully submitted,

**WAITT LICENSE COMPANY OF
FLORIDA, INC.**

By: 
Lawrence Bernstein

Its Attorney

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Attachment

February 17, 2000

Bernard R. Segal, P.E.
Consulting Engineer
Washington, DC

**ENGINEERING STATEMENT
IN SUPPORT OF REPLY TO
SUPPLEMENTAL COMMENTS IN
MM DOCKET NUMBER 99-318**

This Engineering Statement has been prepared on behalf of Waitt License Company of Florida, Inc. (Waitt), the proponent in MM Docket 99-318 for the allotment of DTV Ch. 9 to Panama City, Florida, in substitution for DTV Ch. 29. Emmis TV License Corp. of Mobile (Emmis) has submitted Comments and Supplemental Comments in the aforementioned rulemaking proceeding. Emmis has requested that its Supplemental Comments be accepted for consideration even though submitted out of the normal Comments and Reply Comments pleading cycles. Since those Supplemental Comments inject a new concept not previously considered in the Comments and Reply Comments pleading cycles, the instant Engineering Statement provides support for a Reply to the Emmis Supplemental Comments.

Specifically, Emmis' Supplemental Comments inject the concept of operation by WPGX-DT on the allotted Ch. 29 with maximum power of 1000 kW as a preferred alternative to the proposal specified in the pending rulemaking petition for operation on Ch. 9 with effective radiated power of 100 kW

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(MAX-DA). Emmis' claim is that with WPGX-DT operating on Ch. 29 with maximum power of 1000 kW, a total service improvement to an additional population of 35,500 persons would be achieved when WALA-DT simultaneously operates on Ch. 9 as proposed in Emmis' pending amended application for construction permit.

The Emmis suggestion is meaningless and should be disregarded on three grounds. First, Emmis has not demonstrated the technical feasibility of WPGX-DT operation on Ch. 29 with power as great as 1000 kW. No studies have been included which demonstrate that compliance with the FCC's criteria for operation in excess of the allotted 50 kW is feasible. Absent such a showing, the hypothetical conclusion that service to 35,500 more persons is possible, is meaningless.

The second reason for disregarding the notion suggested by Emmis is that the cost for implementation of a 1000 kW Ch. 29 UHF facility in so small a market as Panama City is prohibitive. Thus, even if the operation was technically feasible, it would not be proposed by Waitt in any event because of those economic considerations. Finally, the 1000 kW Ch. 29 operation is not

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before the FCC for consideration. The 1000 kW Ch. 29 operation is hypothetical and is not a pending proposal for consideration before the FCC.

For the foregoing reasons, the Supplemental Comments by Emmis should be disregarded.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 16, 2000.

A handwritten signature in black ink that reads "Bernard R. Segal, P.E." in a cursive style.

Bernard R. Segal, P.E.

CERTIFICATE OF SERVICE

I hereby certify that I have, this 17th day of February, 2000, served copies of the foregoing "Reply to Supplemental Comments" upon the following persons via first class United States mail, postage prepaid:

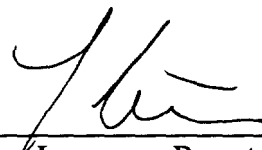
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